LOW PING MING

v.

MBF FINANCE BHD

HIGH COURT MALAYA, KUALA LUMPUR
STEVE SHIM J
[ORIGINATING SUMMONS NO: D5-24-359-1998]
7 OCTOBER 1999

HIRE PURCHASE: *Hire purchase agreement - Validity - Whether financier had title to goods - Whether buyer already vested with title to goods after making initial part-payment of purchase price to dealer - Whether there was a true hire-purchase agreement between buyer and financier - Whether financier could repossess goods - Remedies available to financier*

The plaintiff had entered into a hire-purchase agreement with the defendant in respect of its acquisition of some machinery from a dealer. The defendant subsequently repossessed the machinery on account that the plaintiff had defaulted in its instalments. In the instant application for declaratory relief, the plaintiff argued that both the hire-purchase agreement as well as the defendant's repossession of the machinery were invalid.

Held:

[1] At the material time of the transaction between the plaintiff and the dealer of the machinery, the defendant was a stranger. This was because the hire-purchase agreement between the plaintiff and the defendant was entered into subsequent to the said transaction.

[2] At the time of the execution of the hire-purchase agreement, the title to the machinery (and hence the ownership) was already vested in the plaintiff as it had made an initial part-payment of the purchase price to the dealer and had taken delivery of the machinery. Thus, the defendant had no title to or ownership of the machinery. Consequently, the agreement between the plaintiff and the defendant was invalid as it was not a true hire-purchase agreement. The defendant's repossession of the machinery was also invalid as it was based upon an invalid hire-purchase agreement.

[Plaintiff's application allowed.]

For the plaintiff - Vijaya Ratnam
For the defendant - V Vishnu Kumar; M/s Kam Woon Wah

Reported by Alex KC Lee

JUDGMENT

Steve Shim J:

In this case, the plaintiff has taken out an originating summons against the defendant seeking certain declaratory reliefs. The defendant has opposed the application. The plaintiff had applied for a loan from the defendant to finance the purchase of a machine described as a Merlo Panaronic EVS P.30.7 with registration no. CAR 5886 (the said CAR 5886) and which loan was approved by the defendant upon the plaintiff entering into what was described as a hire-purchase agreement with the defendant. It was alleged that the plaintiff had failed to pay the installments in accordance with the said hire-purchase agreement as a result the defendant took possession of CAR 5886.

At the outset, it is necessary to restate the relevant principles relating to a hire-purchase agreement. A hire-purchase agreement, at common law, is regarded as a form of contract whereby the owner lets goods out on hire and agrees that the hirer may either return the goods and terminate the contract or elect to buy the goods on the completion of the required periodic payments. A common characteristic or feature of such an agreement is that the hirer has the option of purchasing the goods. And throughout the period of hire-purchase, title to the goods remains with the owner. Therefore, unlike a sale of goods, no title to the goods passes from the owner to the hirer during the period of hire. It is common practice nowadays for a finance company to be involved in a hire-purchase transaction as owner. For example, the finance company buys the goods from the dealer who is paid the price and the finance company then steps into the dealer's shoes and becomes the owner for the purpose of the hire-purchase agreement. In this way, the finance company becomes the owner as well as financier.

In the instant case, the central thrust of the plaintiffs application is directed entirely at the validity of the hire-purchase agreement (the said agreement) entered into between the plaintiff and the defendant on 23 December 1996 in respect of the said CAR 5886. In this respect, counsel for the plaintiff has drawn attention to cl 2 of the said agreement the relevant part of which states:

> On signing the agreement the Hirer shall pay the Owner the amount of the initial payment (which shall become the property of the owner absolutely) specified in the schedule hereto on consideration of the option to purchase herein contained ...

According to him, the option to purchase under cl 2 above is only effective and valid if the plaintiff had furnished consideration for the same to the defendant by paying over the initial payment direct to the defendant as provided for in the said cl 2. He contends that cl. 2 is invalid, having regard to the factual circumstances as disclosed in affidavits which can be described as follows: that the plaintiff intended to purchase the said CAR 5886 from Avian Engineering Malaysia Sdn Bhd (the dealer) apparently for an agreed price of RM196,326; that he made the initial payment to the dealer on 21 October 1996 and 4 November 1996 amounting to RM35,000 after which the said CAR 5886 was delivered to him on 15 November 1996; that the plaintiff thereafter approached the defendant for a loan to settle the balance of the purchase price to the dealer and which loan was granted by the defendant upon the execution of the said agreement on 23 December 1996. These facts have not been disputed.

Given the factual scenario above, two factors have clearly emerged: (1) that at the material time of the transaction between the plaintiff and the dealer in respect of the purchase of the said CAR 5886, the defendant was a stranger as the said agreement only came into existence on 23 December 1996; (2) that at the time of the execution of the said agreement on 23 December 1996, the title to the said CAR 5886 and therefore its ownership would have been vested in the plaintiff since the plaintiff had, as I have said, made the initial payment as part-payment of the purchase to the dealer on 21 October 1996 and 4 November 1996 respectively and had also taken delivery of the same on 15 November 1996. That being the position, the defendant would have no title or ownership in the said CAR 5886 at the time when the said agreement was executed on 23 December 1996 nor was there any consideration for the option to purchase by the plaintiff at the material time. In the absence of such an essential characteristic or feature, the said agreement could not be regarded as a real hire-purchase agreement. In my view, the facts and evidence as disclosed in affidavits do not support cl 2 of the said agreement and therefore it is void and of no effect whatsoever. In the circumstances, I hold that the said agreement is not actually a hire-purchase agreement and as such it is invalid. I also hold that the repossession of the said CAR 5886 by the defendant is invalid as it was based on an invalid hire-purchase agreement. I order that it be returned to the plaintiff accordingly.

To the extent stated, I will allow the application with cost. Let me add that notwithstanding the above decision, the defendant is of course at liberty to take whatever appropriate action it deems fit to recover the loan in question.